

IN THE SUPREME COURT OF FLORIDA

CASE NO. 75,237

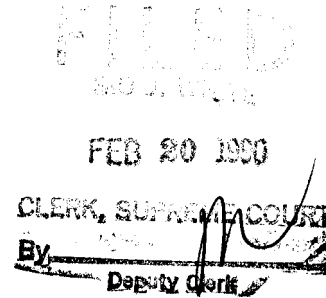
THE STATE OF FLORIDA,

Petitioner,

vs.

ANGELO MAURICE REDDICK,

Respondent.



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ON PETITION FOR DISCRETIONARY REVIEW

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ANSWER BRIEF OF RESPONDENT

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## INTRODUCTION

The Petitioner, STATE OF FLORIDA, was the prosecution in the trial court and the appellee in the District Court of Appeal. The Respondent, ANGELO MAURICE REDDICK, was the defendant in the trial court and the appellant in the District Court of Appeal. Throughout this brief the parties will be referred to as they appeared in the trial court.

References to the Record on Appeal will be made by the letter "R" followed by the appropriate page number, e.g. R-12. References to the transcript of the trial court proceedings will be made by the letter "T" followed by the appropriate page number, e.g. T-111.

## STATEMENT OF THE CASE

Defendant accepts the prosecution's Statement of the Case as a correct statement of the nature of the case and the course of the proceedings.

## STATEMENT OF THE FACTS

Defendant cannot accept the prosecution's Statement of the Facts and would specifically note the following areas of disagreement.

While a number of witnesses claim to have heard four or more shots there were only three shell casings found (R-126,216). Also, while the witnesses claim that the shots

were fired into the house there was only one projectile found therein (R-127, 217) and there was no projectile recovered from the deceased victim (R-256).

Mr. Brumaire's testimony on the matter was self-contradictory. He initially testified that he heard two shots while he was inside and two more when he got outside (R-142,154). However, on cross-examination he stated that he heard four shots while he was inside and no more when he came outside (R-163). He could not see the shooting while he was inside (R-164).

Ms. French testified that she could not remember how many shots were fired (R-185). Officer Frazier heard a number of shots (R-279) but could not say whether they were being fired into the house (R-288). Although Officer Frazier saw a person in a shooting stance he did not see any shots fired (R-288)

There was no evidence which established that the bullet which injured Mr. Rossmund was different than the bullet which killed Mr, Terrible.

### SUMMARY OF ARGUMENT

As there is no proof beyond a reasonable doubt that more than one shot was fired into the house a Carawan analysis is applicable since the convictions were predicated on a single act.

Since it is improper to convict and punish a person twice for a single misuse of a firearm the defendant's conviction for shooting into an occupied dwelling must be vacated based on the rule of lenity.

### ARGUMENT

THE DEFENDANT'S CONVICTION FOR SHOOTING INTO AN OCCUPIED DWELLING DOES VIOLATE THE PRINCIPLES ENUNCIATED IN CARAWAN -v- STATE, 515 So. 2d 161 (Fla., 1987), WHERE THE DEFENDANT WAS ALSO CONVICTED OF FIRST DEGREE MURDER AND ATTEMPTED FIRST DEGREE MURDER ARISING FROM THE SAME TRANSACTION.

First, defendant would point out while he has used, in the issue for appeal, the same terminology as has the prosecution it is somewhat misleading. In Carawan -v- State, supra this Court specifically pointed out that its holding applied only to separate punishments arising from one act not one transaction, Carawan, supra at 170, n.8. The prosecution's use of the term transaction therefore would demand a negative answer to the question posed.

In Carawan there was testimony from the victim that he had been struck by two separate shotgun blasts but there was no other testimony which in any way established the number of blasts which struck the victim. This Court found that the record did not establish beyond a reasonable doubt that the victim was struck by more than one blast and that therefore, it had to be concluded that the offenses were predicated on one underlying act, Carawan, supra at 170.

In the instant case we are faced with a similar situation. Most of the witnesses agree that they heard at least four shots and that the shooting was being aimed into the house. However, there is no proof beyond a reasonable doubt that more than one shot was actually fired into the house.

There was only one expended projectile found in the house. There was no other projectile located in the deceased victim's body. (This is important as the deceased victim was inside the house at all times.) There was no evidence showing that the two victims were struck by different projectiles. Therefore, while defendant has used the term transaction it is his contention that absent the requisite proof beyond a reasonable doubt it must be concluded that the convictions in question were predicated on a single act.

The preceding being the case it is proper for a Carawan analysis to proceed. On the analysis defendant agrees with the prosecution's assertions as to the first two steps in the process.

There is no specific, clear and precise enunciation of legislative intent as to whether there can be separate punishments for shooting into an occupied dwelling and first degree murder or attempted first degree murder. The offenses are separate offenses under the test set out in Blockburger -v- United States, 284 U.S. 299, 52. S.Ct. 180, 76 L.Ed.2d 306 (1932).

The final step in the analysis is that the rule of lenity requires resolution of all doubts in favor of defendant if there is a contrary legislative intent which overcomes the Blockburger presumption of separate offenses. The prosecution in arguing that the rule of lenity does not apply relies on the statement of the purpose of Florida Statute 790.19 contained in Golden -v- State, 120 So. 2d 651 (Fla., 1st DCA 1960) and the apparent purpose of Florida Statute 782.04.

In so relying the prosecution states that, as the statutes appear to have been aimed at separate evils the two convictions are permissible. The "separate evil" analysis is used in Carawan as an example of a situation where the rule of lenity may or may not apply, Carawan, 515 So. 2d at 168. it is not the only situation imaginable.

Defendant would argue that the appropriate analysis here is that used in Burton -v- State, 522 So. 2d 88 (Fla. 5th DCA 1988) and Henderson -v- State, 526 So. 2d 743 (Fla 3rd DCA 1988). In those cases it was held that a person should not be convicted and punished twice because of one misuse of a firearm. In this

case the defendant has been so convicted and punished because of the firing of one shot into the house. The legislature, when enacting the murder statute, could foresee that some murders or attempts would occur as alleged herein and the result reached in this case by the Third District Court of Appeal is in keeping with an appropriate Carawan analysis.

The prosecution relies on Carawan itself in its argument. In Carawan there were convictions for attempted first degree murder, aggravated battery and shooting into an occupied structure. This Court reversed the aggravated battery conviction and affirmed the others. This Court did not address the shooting into an occupied structure conviction and there is no indication that it was ever argued or preserved as a proper issue for appeal therefore the prosecution's reliance on Carawan is misplaced.

Finally, defendant would note that the Third District Court of Appeal also noted conflict in its ruling vacating the conviction for possession of a firearm during the commission of a felony. Defendant has not addressed that issue as the prosecution has not contested that matter, Brief of Petitioner, pg 9 n2.

#### CONCLUSION

For the foregoing reasons the decision of the Third District Court of Appeal should be affirmed and the case should be remanded to the trial court with instructions to vacate defendant's convictions and sentences for shooting into an occupied

structure and possession of a firearm during the commission of a felony.

Respectfully submitted,

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BY  KENNETH P. SPEILLER, ESQ.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing Answer Brief of Respondent was mailed this 19th day of February, 1990, to: Julie S. Thorton, Assistant Attorney General, Department of Legal Affairs, 401 N.W. 2nd Avenue, Suite N921, Miami, Florida 33128.

  
OF COUNSEL